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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 672

ROBERT C. REED, BESSIE B. REED AND
F. W. CROLL, JR.,

Petitioners,

vs.

CHICAGO NORTH SHORE AND MILWAUKEE
RAILROAD COMPANY,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT, AND BRIEF IN
SUPPORT THEREOF.**

VINCENT D. WYMAN,
Counsel for Petitioners.

AUSTIN L. WYMAN,
DANIEL P. NAGLE,
Of Counsel.



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*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Summary and Short Statement of the Matter Involved.

Petitioners, Robert C. Reed, Bessie B. Reed and F. W. Croll, Jr., pray that this Court grant the writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit rendered December 2, 1942 (R. 663), affirming the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered July 29, 1942 (R. 633), which

decree approved a petition for reorganization of the Chicago North Shore and Milwaukee Railroad Company under Chapter X of the Bankruptcy Laws of the United States, and dismissed one filed under Chapter VIII of the Bankruptcy Laws of the United States, both filed by these petitioners (R. 3 and 8). The Court below, evidently entertaining the same uncertainty which prompted petitioners to file separate petitions under each section, directed these petitioners to appeal (R. 643), and, since the affirmance by the Circuit Court of Appeals, has requested these petitioners to file this petition for certiorari. Since the Circuit Court of Appeals treated the two petitions as the subject of one appeal before it and delivered one opinion, we present but one petition here.

Chapter X of the Bankruptcy Act, Section 106 (Subsection 3) provides for reorganization under that Chapter of "any railroad corporation except a railroad corporation authorized to file a petition under Section 77 of this Act."

Chapter VIII (77m) excludes from the scope thereof the reorganization of "a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than fifty per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment."

This Court in *United States v. Chicago North Shore and Milwaukee Railroad Company*, 288 U. S. 1, held that this railroad is an interurban electric railway as that term is used in Section 20a of the Interstate Commerce Act.

United States Circuit Court of Appeals for the Seventh Circuit in *Sprague v. Woll*, 122 Fed. 2d 128, sustained an Interstate Commerce Commission finding that the Road was *not* a street, interurban, or suburban electric railway within the meaning of the Railway Labor Act, the Railroad

Retirement Act and the Carriers' Taxing Act, and that it was part of *the* general steam railroad system of transportation.

The Road operates in the states of Illinois and Wisconsin, with southern terminal in Chicago and northern terminal in Milwaukee (see map, R. 618). While less than twenty per cent (20%) of its revenue is from freight, it has a number of electric locomotives, and has hauled as much as fifty to sixty-five cars of freight in one train (R. 563, 425). Even before the war the road hauled a million and a half tons of carload freight a year, practically all of which is interchanged with steam lines (R. 462, 463, 538). Between the years 1925 and 1937 the freight tonnage moved increased over two hundred per cent, whereas the number of passengers decreased over twenty-seven per cent (R. 478, 495). In a two week period carload shipments were handled which originated in twenty-seven different states from the Gulf to Canada, and between and from the East to the West coasts (R. 466). The Road owns modern terminal facilities similar to that of steam railways. Ninety-three per cent of its right of way is privately owned by it (R. 453). It operates one hundred thirty-eight miles of road (R. 566). From Milwaukee City limits to Chicago City limits the average speed of through trains is fifty-five miles an hour, including six stops. The Road competes with the Chicago and Northwestern Railroad on a time and service basis (R. 293, 372, 472). The time table in evidence (R. 605) discloses the character of freight and passenger service offered to the public.

Statement as to Jurisdiction.

A. Jurisdiction of this Court is invoked under the Judicial Code (Title 28 U. S. C. C. A. Section 347), providing for review of judgments of the Circuit Court of Appeals.

B. The claim of petitioners exceeds \$2,500,000.00 (R. 3).

C. The proceedings are under the bankruptcy laws of the United States; the judgment of the Circuit Courts of Appeals entered December 2, 1942 was final in character.

Questions Presented.

1. Is Chapter X or Chapter VIII of the Bankruptcy Laws of the United States the proper vehicle for reorganization (a) in view of the conflicting decisions of this Court, and of the Circuit Court of Appeals in the two previous cases and in this case? (b) In view of the fact that the Road, while doing an interurban passenger business, does more than interurban business in its freight transportation and in its through high speed passenger traffic?

2. Does the phrase in Chapter VIII of the Bankruptcy Act "part of a general railroad system of transportation" refer to a system like the New York Central or the Pennsylvania Railroad, or to a connecting group of railroads not necessarily under common control, but interchanging business over lines with common freight exchange points?

Reasons Relied On for the Allowance of the Writ.

1. The decisions of this Court in *United States v. Chicago North Shore and Milwaukee Railroad Company*, 288 U. S. 1, of the Circuit Court of Appeals for the Seventh Circuit in the case at bar, and in *Sprague v. Woll*, 122 Fed. (2d) 128 are in conflict. The status of the Road as to the jurisdiction of the State and Interstate Commerce Commissions should be definitely settled.

2. The questions presented as between the particular statutes involved are ones of first impression.

PRAYER.

Wherefore, your petitioners, Robert C. Reed, Bessie B. Reed and F. W. Croll, Jr., respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and transmit to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in a case numbered and entitled on its docket, No. 8082, *Robert C. Reed, Bessie B. Reed and F. W. Croll, Jr., Petitioners-appellants v. Chicago North Shore and Milwaukee Railroad Company, Respondent-appellee*, and that the judgment of said court, affirming the decree of the District Court, may be reversed by this Honorable Court; and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

VINCENT D. WYMAN,
Counsel for Petitioners.

AUSTIN L. WYMAN,
DANIEL P. NAGLE,
Of Counsel.